

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6849**

**BILL NUMBER:** HB 1248

**NOTE PREPARED:** Jan 5, 2012

**BILL AMENDED:**

**SUBJECT:** New Markets Job Growth Tax Credit.

**FIRST AUTHOR:** Rep. Crouch

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☐ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State

**Summary of Legislation:** This bill establishes a New Markets Job Growth Credit against state tax liability for investments made by a taxpayer in a qualified community development entity that then uses the proceeds of the investment to make investments in certain qualified low income community businesses located in Indiana. It specifies that the tax credit is equal to an applicable percentage multiplied by the purchase price of the qualified investment. It provides that the applicable percentage is 0% for the first and second credit allowance dates, 7% for the third credit allowance date, and 8% for the fourth, fifth, sixth, and seventh credit allowance dates.

The bill provides that a taxpayer is not entitled to a carry-back or refund of an unused tax credit, but the taxpayer may carry over excess credit amounts for not more than five subsequent taxable years. It requires the Indiana Economic Development Corporation (IEDC) to limit the monetary amount of qualified equity investments to an amount necessary to limit the claiming of the tax credit to not more than \$20,000,000 in any state fiscal year (based on the anticipated use of the tax credits without regard to the potential for taxpayers to carry forward tax credits to later tax years).

**Effective Date:** January 1, 2013.

**Explanation of State Expenditures:** *Department of State Revenue (DOR):* The DOR would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to reflect this tax credit. The DOR's current level of resources should be sufficient to implement the change.

*Indiana Economic Development Corporation (IEDC):* The bill requires the IEDC to establish a program for accepting and reviewing applications for and certifying community investment (qualified equity investment)

tax credits. The IEDC's current level of resources should be sufficient to fulfill these administrative tasks.

**Explanation of State Revenues:** *Summary:* Under the bill, a taxpayer who makes a qualified equity investment (QEI) is entitled to a tax credit against the taxpayer's Adjusted Gross Income (AGI) Tax liability, Financial Institutions Tax liability, or Insurance Premiums Tax liability. The credit begins in tax year 2013; thus, the fiscal impact will commence in FY 2014.

Revenue collected from the AGI Tax, Financial Institutions Tax and Insurance Premiums Tax is deposited in the state General Fund. The IEDC shall limit the amount of QEIs so that the total tax credit does not exceed \$20 M per year. This is based on the anticipated use of the tax credits without regard to the potential for taxpayers to carry forward tax credits to later tax years. The revenue to the state General Fund would be reduced by the amount of the credits.

*Additional Information:*

This bill establishes the New Markets Job Growth Credit that permits qualified community development entities (CDEs) to issue long term QEIs. The funds generated would then be used to make low income community investments in qualified active low income community businesses located in the state. The bill stipulates that a maximum of \$10 M can be invested in any one community business. A business is not eligible for investments if it derives at least 15 percent of its annual revenue from the rental or sale of real estate. However, this exclusion does not apply if the business is controlled by a second business, and the second business earns less than 15 percent of its annual revenue from the rental or sale of real estate, and is the primary tenant of the real estate leased from the first business.

Taxpayers who purchase QEIs are entitled to a tax credit against the taxpayer's AGI Tax liability, Financial Institutions Tax liability, or Insurance Premiums Tax liability. A taxpayer holding a QEI on a credit allowance date occurring during the taxable year may claim the credit for such taxable year in an amount equal to the applicable percentage of the original purchase price of the QEI. The credit period for the investment is the seven-year period beginning on the date the equity investment is made, even though the credit is allowable on the first day of each credit year. The percentage is zero percent for the first and second credit allowance dates; seven percent for the third; and eight percent for the fourth to the seventh credit allowance dates. Under IRS rules, a credit allowance date is the date on which the investment is initially made, and each of the six subsequent anniversary dates of such date.

The tax credit is not refundable, or saleable on the open market, and unused credit amounts may not be carried back. However, a taxpayer may carry forward any unused credit amount for up to five subsequent years. For pass through entities, the credit may be claimed by shareholders, partners, or members in proportion to their distributive income from the pass through entity.

The qualified CDE which issues the equity investment shall certify to the IEDC the anticipated dollar amount of the investments to be made in Indiana during the first year of the investment. If the actual dollar amount is different than the amount certified, the IEDC shall adjust the credit at the end of the first year (i.e. on the second credit allowance date) to account for the difference. The IEDC shall limit the total amount of QEIs permitted so that the total tax credit does not exceed \$20 M per year.

If the proceeds of a QEI are invested completely in Indiana, the purchase price, for the purpose of calculating the tax credit equals 100 percent of the QEI, regardless of where the qualified CDE makes other investments. If the investment is not totally made in Indiana, the purchase price would be reduced by the ratio of the

portion of the investment not invested in Indiana to the total investment of the qualified CDE regardless of location.

The IEDC may not make an adjustment in a tax credit or recapture a portion of a tax credit unless the agency notifies the CDE in advance, and gives the entity six months to resolve the cause of the proposed adjustment or recapture. If the Internal Revenue Service recaptured any of the federal tax credit claimed by the taxpayer, the IEDC's recapture would be proportional to the federal amount recaptured; if the CDE redeemed part of the investment before the seven-year period expires, the IEDC's recapture would be proportional to the amount of the redemption payment.

An investment shall be considered valid and eligible for tax credits, even if the investment has been sold or repaid, if the issuer reinvests an amount equal to the original investment in another qualified low income community investment within 12 months. An issuer may not be required to reinvest capital returned from qualified low income community investments if the QEI has existed for more than six years.

***Background Information:*** This bill is based on the New Markets Tax Credit (NMTC) Program. This was enacted by Congress as part of the Community Renewal Tax Relief Act of 2000 and is incorporated as section 45D of the Internal Revenue Code. This Code section permits individual and corporate taxpayers to receive a credit against federal income taxes for making Qualified Equity Investments (QEIs) in qualified community development entities (CDEs).

These investments are expected to result in the creation of jobs and material improvement in the lives of residents of low-income communities. Examples of expected projects include financing small business, improving community facilities such as daycare centers, and increasing home ownership opportunities.

The actual cash investment made by the investor to the CDE, which is referred to as the equity investment, is the first step in defining a QEI. The cash investment eventually qualifies for the NMTC provided that the CDE makes qualified low-income community investments.

A QEI is, in general, any equity investment in a CDE if:

1. Such investment is acquired by the investor at its original issue (directly or through an underwriter) solely in exchange for cash;
2. Substantially all (at least 85%) of the cash is used by the CDE to make a qualified low-income community investments; and
3. The investment is designated CDE as a QEI on its books and records using any reasonable method.

The term equity investment means any stock in an entity which is a corporation, and any capital interest in an entity which is a partnership. In general, an equity investment in a CDE is not eligible to be designated as a QEI if it is made before the CDE enters into an allocation agreement with the Community Development Financial Institutions Fund.

A taxpayer holding a qualified equity investment on a credit allowance date occurring during the taxable year may claim the NMTC for such taxable year in an amount equal to the applicable percentage of the original purchase price of the QEI. The credit period for the investment is the seven-year period beginning on the date a QEI is initially made, even though the credit is allowable on the first day of each credit year.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** Department of State Revenue; IEDC.

**Local Agencies Affected:**

**Information Sources:** New Markets Tax Credit, Internal Revenue Service, May 2010.  
<http://www.irs.gov/pub/irs-utl/atgnmtc.pdf>

**Fiscal Analyst:** David Lusan, 317-232-9592.